

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 820 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KISHORBHAI B CHAUHAN

Versus

DIVISIONAL CONTROLLER

Appearance:

MR HK RATHOD for Petitioner

Mr Hardik Raval for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 05/10/96

ORAL JUDGEMENT

By way of this petition, the petitioner workman has challenged the award of the Labour Court given in Reference (LCR) No. 161 of 1981 between Gujarat State Road Transport Corporation and the petitioner.

The dispute referred to the Tribunal was as under:

Shri Kishor B Chauhan should be reinstated to his original post with full back wages.

During the course of the proceedings before the Tribunal, by way of evidence as well as by way of pleadings, factual position of the workman found is that he started his career as Hamal from 1.12.1975 and, thereafter he was taken up as a Watchman. This change is on and from 29.8.80.

In the said order, reliance has been placed on the fact that the workman was sentenced under section 66(B) of the Bombay Prohibition Act when an offence came to be registered against him as 17/74 at Babara Police Station, district Amreli. The Traffic Controller, therefore, felt that the workman cannot be continued in the service as per the existing rules.

Annexure-B refers to the workman as a reliever Watchman at Babara Point, at Amreli Centre, vide Amreli Divisional Controller's letter No. ESTA/10407/80 dated 19.8.80. It was also mentioned in the said letter that the workman is hereby relieved from today i.e. 25.8.80 before office hours. In the last para of the said letter, it has been mentioned that the workman is hereby immediately relieved from service from 25.8.80 and the reason given is that of prohibition case.

It has come on the record before the Tribunal that the workman was convicted in the year 1975. He stated that this occurred on 1.12.1975. Admittedly, therefore, the offence occurred prior to starting of the relationship of Master and Servant.

It has also come on record before the Tribunal that from 15.1.80 the Corporation started taking work from the workman of that of a Watchman on temporary basis. By the time he came to be relieved, as per the statement-15, the workman had worked for more than 240 days.

Under the circumstances, while one may agree with the observations of the learned Tribunal that the workman was a temporary employee and, therefore, rule-61 may be applicable to his case, but when the Tribunal goes further that proviso to that rule which lays down that the service of a casual worker and a part time worker may be terminated without notice is attracted, in my opinion, is wholly incorrect.

The only material relied on for the purpose by the learned Tribunal is that being a reliever watchman appointed from month to month, the workman would be a casual worker. However, under the Industrial law, working for 240 days in a given year, as is the case here, even if he were workman, he automatically be out of the category of a casual worker. In my opinion, he can be a temporary workman but he cannot be said to be a casual workman.

In this back ground, reliance placed by the Tribunal on the proviso is obviously unwarranted. There is no question of notice having been given and, therefore, main provision of Regulation 61 cannot be fallen back upon by the Corporation. Even if it wanted to do so, now it is a settled position as per the pronouncement of the Apex Court in Civil Appeal No. 3912 of 1986 filed by the respondent corporation in the case of Pankaj Kumar Dinkerrai Jani, Amreli, where relying upon reasonings set out in Delhi Transport Corporation vs. D.T.C. Mazdoor Congress and Ors., reported in AIR 1991 SC 101, Regulation 61 is held to be bad as it violates Articles 14, 16 and 19 of the Constitution of India.

No doubt, in the aforesaid Supreme Court decision, the provision under consideration was Regulation 9(b) of Delhi Road Transport Authority (Conditions of Appointment and Services) Regulations, 1952. Finding that when the said regulations 9(b) has been struck down for the reasons set out in the said Full Bench decision, Rule-61 of S.T. Regulation cannot be sustained. Even if, therefore, the said rule was available for the S.T. Corporation as a defence, this judgment will come in their way.

A casual reference made before the Tribunal as to Regulation 81 whereby a convicted person can straight way be removed from the services, again is hardly of any help to the corporation. The reason is that conviction contemplated by Regulation 81 necessarily has to be a conviction after the workman has joined the service and has become an employee of the respondent corporation. Whatsoever his earlier lapse might be, that cannot be unearthed and used against the employee after he joins the services because the disciplinary jurisdiction of the employer would necessarily be confined to the period of master and servant relationship which of necessity will commence on and from the date of joining of the service by the employee.

My learned colleague Mr R. Balia had an occasion to deal with the similar situation pertaining to regulation no. 81. There also he has come to that very conclusion as to applicability of regulation 81. I wholeheartedly agree with the decision given by the learned Judge in Special Civil Application No. 3170 of 1995 on 2nd September, 1995.

In that matter, offence was under the Prohibition Act and it has occurred on a day on which the workman was not on duty. This would mean that the workman was very much in service, however, that conviction was sought to be relied upon for invoking powers under Regulation 81 after a gap of 5 to 6 years of conviction. This was struck down by the learned Judge.

The situation before this court is altogether different. There is no relationship of master and servant at the time when the conviction took place. Obviously, therefore, it could not have been made a basis for terminating the service. Incidentally, it may be mentioned that Regulation 81 is not pressed into service by the Corporation. Even if it were so done for the aforesaid reasons, the corporation will not succeed.

In the result, the petition succeeds. The Award of the Labour Court, Rajkot is quashed and set aside. The Respondent-Corporation is directed to reinstate the petitioner in service with full backwages with continuity of service. The reinstatement to be carried out within a period of one month and backwages to be paid to the petitioner within a period of three months from today. Rule is made absolute with no order as to costs.
